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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Kim Cramton,

10 Plaintiff,

11 v.

12 Grabbagreen Franchising LLC, et al.,

13 Defendants.
14

No. CV-17-04663-PHX-DWL

ORDER

15 The bench trial in this matter took place between May 24-28, 2021. The Court now
16 issues its findings of fact and conclusions of law.

17 **LEGAL STANDARD**

18 Rule 52(a)(1) of the Federal Rules of Civil Procedure provides that “[i]n an action
19 tried on the facts without a jury . . . , the court must find the facts specially and state its
20 conclusions of law separately. The findings and conclusions may be stated on the record
21 after the close of the evidence or may appear in an opinion or a memorandum of decision
22 filed by the court.”

23 The Ninth Circuit has explained that a district court’s findings under Rule 52(a)
24 “should be explicit enough to give the appellate court a clear understanding of the basis of
25 the trial court’s decision, and to enable it to determine the ground on which the trial court
26 reached its decision.” *Alpha Distrib. Co. of Cal., Inc. v. Jack Daniel Distillery*, 454 F.2d
27 442, 453 (9th Cir. 1972). With that said, such findings must also “strike an appropriate
28 balance between detail, simplicity, and efficiency. . . . [E]xcessively long and detailed

1 findings are not necessary . . . and can even be unhelpful. . . . Ultimately, the trial court’s
2 findings should be sufficient to reveal the court’s concept of the facts and applicable legal
3 standards without being needlessly elaborate or too wordy.” *See* 2 Gensler, Federal Rules
4 of Civil Procedure, Rules and Commentary, Rule 52, at 46-47 (2021). Put another way,
5 “the judge need only make brief, definite, pertinent findings and conclusions upon the
6 contested matters; there is no necessity for over-elaboration of detail or particularization of
7 facts.” *See* Fed. R. Civ. P. 52, advisory committee’s note to 1946 amendment.

8 FINDINGS OF FACT

9 Although this case originally involved a sprawling array of claims and
10 counterclaims (Docs. 88, 95), only a few claims (and none of the counterclaims) survived
11 summary judgment (Doc. 247). Additionally, one of the surviving claims was stayed when
12 a corporate defendant filed for bankruptcy after summary judgment (Doc. 254) and the
13 remaining claims were later found to be covered by a valid, contractual jury waiver (Doc.
14 345).¹ As a result, only two sets of claims were presented for resolution during the bench
15 trial: *first*, Plaintiff Kim Cramton’s (“Cramton”) claim against Defendant Keely Newman
16 (“Keely”)² for violating Arizona’s minimum wage laws; and *second*, Cramton’s claims for
17 negligent misrepresentation, fraud, and breach of the implied covenant of good faith and
18 fair dealing against Keely and an entity called Eat Clean Holdings, LLC (“ECH”).

19 The factual findings below are grouped into three parts. Part I sets forth some
20 background facts concerning the relationship between Cramton and Keely and resolves
21 some of the broader disputed factual issues in this case. Part II resolves other contested
22 facts bearing on the minimum wage claim. Part III resolves other contested facts bearing
23 on the remaining claims.

24 ...

25 ...

26 ¹ One exception is that the minimum wage claim in Count Four against Defendant
27 Grabbagreen Franchising, LLC (“GFL”) is not covered by the jury waiver. (Doc. 345 at
37-38.)

28 ² Keely’s spouse, Kelli Newman (“Kelli”), is also one of the key players in this case.
They will be referred to by their first names to avoid confusion, not out of any disrespect.

1 I. Background

2 In 2013, Keely created a healthy fast-food restaurant concept called “Grabbagreen.”
3 (Doc. 310 at 1-2 [stipulated facts in Final Pretrial Order].)

4 In September 2014, Cramton began working for a Grabbagreen-related entity called
5 Gulf Girl Squared, Inc. (“GGS”), whose business purpose was to operate certain
6 Grabbagreen stores in Arizona. (Doc. 310 at 1; Trial Ex. 393 [employment agreement].)
7 Cramton also performed work for a different Grabbagreen-related entity that came to be
8 known as Grabbagreen Franchising, LLC (“GFL”),³ whose business purpose was to sell
9 Grabbagreen franchises to third parties across the country. (Doc. 310 at 2.) As Cramton
10 explained at trial: “I was working at the stores as well as working on the franchising
11 concept.” (5/24 Tr. 93.)

12 Over time, Cramton acquired ownership interests in various Grabbagreen-related
13 entities. Most important, Cramton eventually came to possess an 18.6% membership
14 interest in ECH (Trial Ex. 30 [ECH Operating Agreement, Exhibit A]), which in turn
15 owned GFL and the rights to the Grabbagreen brand (Doc. 310 at 2). Critically, the ECH
16 Operating Agreement, which came into effect in late 2016, contained a provision
17 specifying that if Cramton voluntarily resigned “for any reason” within the first five years
18 after its effective date, Keely would have “the right but not the obligation” to purchase
19 Cramton’s membership units for only \$1. (Trial Ex. 30, § 9.3(b).)

20 In 2016, Keely and Cramton also formed a partnership to buy out a GFL franchisee
21 who was in the process of building a Grabbagreen store in Phoenix. (Doc. 310 at 2-3; 5/24
22 Tr. 97-98.) To effectuate the buyout, Keely and Cramton formed an entity called Krowne
23 Enterprises, LLC (“Krowne”), of which Keely owned 51% and Cramton owned 49%. (*Id.*)
24 Afterward, Cramton used \$66,527 of her personal funds to cover construction and build-
25 out expenses for the store. (*Id.*) In October 2016, an entity called Eat Clean Operations,
26 LLC (“ECO”) executed a promissory note under which it was obligated to repay this
27 \$66,527 to Cramton. (Trial Ex. 28 [promissory note].)

28 ³ GFL’s predecessor was Grabbagreen Franchising, Inc. (“GFI”). (Trial Ex. 17.)

1 As the preceding discussion shows, the business relationship between Cramton and
2 Keely was always complicated and multi-faceted. Beginning in the latter half of 2016,
3 things grew even more complicated. From the Court’s vantage point as the finder of fact,
4 there were three interrelated reasons for this change.

5 The first was the deteriorating financial performance of the Grabbagreen entities.
6 Although one component of the Grabbagreen empire, GFL, was successful in selling
7 franchises and building the Grabbagreen brand, the stores operating under the GGS
8 umbrella experienced a downturn in sales in late 2016. (5/27 Tr. 757-59, 788-89 [Mills];
9 5/28 Tr. 951-54 [Keely].) Additionally, the store that Keely and Cramton had acquired via
10 their partnership was unprofitable and ECO was not in a position to make payments on the
11 \$66,527 loan owed to Cramton. (5/27 Tr. 774-75 [Mills: “ECO did not have the financial
12 capacity to be paying these loan payments.”]; 5/28 Tr. 953 [Keely].) These developments
13 resulted in significant cash flow difficulties and financial pressures. (*See, e.g.*, 5/27 Tr.
14 757-59; Doc. 408 at 293-94 [Mills deposition testimony: Keely admitted in late 2016/early
15 2017 that “the company was struggling financially from a cash flow perspective” and was
16 experiencing “financial stress”].) In an ill-fated effort to address these financial
17 difficulties, the decision was made—against the advice of Grabbagreen’s accountant,
18 Teresa Mills (“Mills”)—to characterize payments made to Cramton after December 2016
19 as loan repayments from ECO, rather than as wage payments from GFL. (5/27 Tr. 774-75
20 [Mills: “I expressed strongly that they not do this. I thought that it was a tax avoidance
21 scheme, basically.”].) This agreement was memorialized in a written document signed by
22 Cramton. (Trial Ex. 32 [“WHEREAS, the [GFL] Board has determined that it is desirable
23 and in the best interests of the Company to discontinue wage accruals for its officers. . . .
24 RESOLVED, that Company authorizes that all wage accruals for all officers discontinue
25 as of December 31, 2016.”].)⁴

26 ⁴ At trial, the parties disputed the genesis of the plan to stop drawing wages from
27 GFL. Some evidence suggested it was a joint decision between Keely and Cramton,
28 motivated by considerations of tax avoidance and/or by the financial reality that, as GFL’s
shareholders, they would be the ones required to make the capital calls necessary to fund
any salaries. (*See, e.g.*, 5/27 Tr. 775 [Mills trial testimony: “After I expressed my
disagreement with this idea, both Kim Cramton and Keely Newman said that this is the

1 The second factor was the strained interpersonal relationship between Keely and
2 Cramton. As early as mid-2016, Cramton was complaining to her therapist, Shelly Hess,
3 that Keely was “verbally abusive.” (5/25 Tr. 329; Trial Ex. 794.) The rift became so
4 apparent to outsiders that Dana Mavros (“Mavros”), a consultant who had originally been
5 retained by Keely to provide business advice (Doc. 408 at 252-55), wrote a lengthy email
6 to Keely and Cramton in February 2017 in which she described “[t]he relationship between
7 the two of you [as] toxic most of the time. You do not listen to each other, you have a hard
8 time treating each other respectfully, and your communication with each other is poor.
9 Although you both will say it’s not ‘personal’ it sounds and it appears to others that you
10 are personally attacking each other and it is not enjoyable to be around the two of you. . . .
11 Your team sees your dysfunctional relationship and it has created a nonproductive negative
12 company culture.” (Trial Ex. 720.)⁵ It was apparent to the Court, as the finder of fact, that
13 the relationship between Keely and Cramton was dysfunctional. As discussed in more
14 detail below, this negative relationship formed an important backdrop for some of the
15 parties’ subsequent decisions.

16 It should be noted that, during trial, Cramton went beyond describing her
17 relationship with Keely as dysfunctional—she (and her counsel) sought to portray it as a

18 _____
19 way that they wanted to do it”]; Doc. 408 at 114 [Mills deposition testimony: “[I]n
20 the beginning Keely and Kim decided they didn’t want to take salary payments in 2017
21 and instead wanted to receive payments on this Eat Clean Operations note.”]; Doc. 408 at
22 210-12 [discussing an “extended conversation” during a “joint conversation” with Keely
23 and Cramton about the plan to “tak[e] the payments as loan payments as opposed to
24 salary”].) Cramton, meanwhile, testified that the wage cessation was a unilateral decision
made by Keely and forced on her against her will. (5/24 Tr. 120-22, 128-29.) The Court
finds it unnecessary to determine whose version of this particular dispute is more believable
because consent wouldn’t be a defense to the minimum wage claim even if Cramton did
willingly and voluntarily agree to the wage-cessation plan. *See* A.R.S. § 23-364(H) (“No
verbal or written agreement or employment contract may waive any rights under this
article.”).

25 ⁵ Mavros provided a similar description of the Cramton/Keely relationship during her
26 deposition testimony, which was admitted at trial. (Doc. 408 at 306 [“[T]heir styles are
27 very different. So Keely gets frustrated and upset with Kim’s style and Kim gets frustrated,
wounded, upset, with Keely’s style. It was clearly a style and communication issue, and
the biggest observation and feedback I gave to both of them was they always think the
worst of each other first; they don’t give each other the benefit of the doubt first, and they’re
too emotional and there’s too much drama”].) Cramton seemed to agree that “toxic”
28 was an appropriate word to describe her relationship with Keely. (5/24 Tr. 144, 206-07.)

1 relationship infused with abuse and cruelty. Indeed, the very first words uttered during
2 Cramton's opening statement were "cruelty is what this case is all about" (5/24 Tr. 27),
3 and Cramton again returned to the "Case About Cruelty" theme during closing argument
4 (Doc. 412 at 5). In a related vein, Cramton sought to establish, through her testimony and
5 the testimony of the witnesses she called, that Keely repeatedly belittled her, shouted at
6 her, directed foul language toward her, and peppered her with unreasonable work-related
7 demands during weekends, nights, and vacations. Cramton also sought to establish that
8 she was forced to work without pay throughout 2017. Keely and her witnesses, meanwhile,
9 presented a far different picture of the Cramton/Keely relationship—they generally denied
10 that Keely ever insulted or shouted at Cramton and presented evidence that Cramton herself
11 used foul language from time to time while at work.

12 From the Court's vantage point as the finder of fact, the truth of the Cramton/Keely
13 relationship fell somewhere in the middle of the parties' somewhat self-serving
14 descriptions. Although some of the Keely's communications to Cramton (in particular, the
15 text chain on September 20, 2017, *see* Trial Ex. 307 at CRA000642-43) were unacceptably
16 crude and demeaning, and although Keely could have been more empathetic and
17 considerate in the wake of Cramton's medical diagnosis in April 2017, Cramton
18 overreached by portraying herself as the victim of cruelty. For example, although it is true
19 that Keely expected Cramton to be available by text on some nights, weekends, and
20 vacations, it must be recalled that Cramton was Keely's business partner, was earning an
21 annual salary of nearly \$200,000 at times during her Grabbagreen tenure (5/24 Tr. 93-94;
22 5/27 Tr. 768), and possessed a substantial equity ownership interest in a closely held small
23 business that was undergoing significant challenges. Under those circumstances, it is not
24 surprising or shocking that Cramton would be expected to monitor her texts and email
25 beyond normal business hours.

26 As another example, although Cramton repeatedly suggested during her direct
27 testimony that she was forced to work without pay throughout 2017,⁶ this was a misleading

28 ⁶ *See, e.g.*, 5/24 Tr. 167 ("I needed money. I hadn't been paid all year."); *id.* at 170
(Q: "Were you getting paid at this time [September 2017]?" A: "I was not."); *id.* at 210

1 description of the financial arrangement. In fact, Cramton received over \$50,000 between
2 the ECO note repayments, benefit payments, and reimbursements. (Doc. 408 at 139-41;
3 Trial Ex. 340 [summary of disbursements].) Although, as discussed further below, the
4 Court agrees with Cramton that the note repayments did not qualify as wage payments
5 from GFL, this is only due to how the parties chose to classify those payments for tax and
6 accounting purposes. In some ways, this classification decision benefited Cramton, who
7 would not have otherwise received any repayment on the ECO note (because ECO had no
8 independent ability to repay the loan). (5/27 Tr. at 773.) But regardless of how the
9 payments were classified, the bottom line is that Cramton received substantial sums of
10 money in 2017 for her Grabbagreen-related work. Thus, her portrayal of herself as a victim
11 of cruelty who was forced to work for free throughout 2017 was less than fully convincing.

12 The third key development in the latter part of 2016 was the discovery that Kelli
13 Newman (“Kelli”), Keely’s spouse (and, at times, GFL’s in-house counsel), had advanced-
14 stage cancer. (5/27 Tr. 841.) Although this development might not appear, at first blush,
15 to have much to do with the Cramton/Keely relationship or the disputed issues in this case,
16 from the Court’s perspective it provides important context for some of the events and
17 conduct that ensued. Among other things, Kelli’s diagnosis caused Keely to assume
18 increased parental responsibilities as to Keely’s and Kelli’s young children. (5/27 Tr. at
19 843-44; 5/28 Tr. 944-46.) As a result, Keely had less time to dedicate to the Grabbagreen
20 business, which she was already struggling to manage remotely from California and then
21 Florida (whereas Cramton and most other workers were based in Arizona). (*Id.*) Critically,
22 these developments helped persuade Keely that it was in her best interest to sell the
23 Grabbagreen business rather than continue attempting to operate it. (5/28 Tr. 908 [Kelli,
24 agreeing that “the ultimate decision to sell [Grabbagreen] so soon came as a result of [her]
25 diagnosis”]; *id.* at 991-92 [same].) As discussed in more detail below, the existence of this

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 (Q: “You weren’t being paid in 2017, correct?” A: “Correct.”); *id.* at 226 (Q: “If you’re
27 so stretched and not getting paid, why are you still working there?” A: “Because I was
28 working there to try to sell the company and get paid out.”); *id.* at 243 (Q: “Were you
getting paid [by September 2017]? A: “I wasn’t getting paid. No, I hadn’t been paid all
year.”).

1 plan to sell the business, and Cramton's knowledge of the plan,⁷ is important in assessing
2 the reasonableness of some of Cramton's subsequent actions and in assessing Keely's
3 intent.

4 The first serious potential acquiror of Grabbagreen was a company called Due North
5 Holdings, LLC ("Due North"). (Doc. 310 at 4.) Keely's discussions with Due North began
6 in early 2017 and continued over the ensuing months. (5/28 Tr. 903-04.) This deal nearly
7 came to fruition—a data room was set up, due diligence was completed, and escrow
8 documents were prepared. (*See, e.g.*, 5/26 Tr. 545, 615-17; 5/27 Tr. 690, 888; 5/28 Tr.
9 968, 999.) The closing date for the Due North deal was initially set in the beginning of
10 June 2017 but was delayed due to unresolved business issues on Due North's end. (Doc.
11 310 at 4.) The closing date was then rescheduled a few times in June and July 2017 and,
12 as late as August 2017, the deal was thought to be pending. (*Id.*)

13 As the Due North deal was being negotiated, Keely and Cramton negotiated a side
14 deal called the "Redemption Agreement." (5/24 Tr. 216-19; Trial Exs. 286, 502.) Under
15 the terms of this agreement, Cramton would receive over \$500,000 upon the closing of the
16 Due North deal. (*Id.*) Cramton credibly testified at trial that this sum was intended to
17 approximate the value of her 18.6% membership interest in ECH. (5/24 Tr. 215-17.)

18 Unfortunately, the Due North deal did not close as planned. The holdup was caused
19 by the illness of one of Due North's principals and disputes within the Due North
20 organization. (5/24 Tr. 228-29; 5/28 Tr. 997; Trial Ex. 212 at G065900 [text messages
21 describing arbitration proceeding between Due North principals].)

22 As the Due North deal was being placed on hold, another potential acquiror named
23 Kahala Brands, Ltd. ("Kahala") entered the picture. Notably, Cramton had longstanding
24 personal relationships with some of the Kahala principals who would be responsible for
25 evaluating the potential deal, including John Wuycheck ("Wuycheck") and Jeff Smit
26 ("Smit"). (5/26 Tr. 540-42 [Cramton had known Wuycheck and Smit since 2005]; 5/26

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28 ⁷ Cramton acknowledged that, as early as February 2017, "we [Cramton and Keely]
both wanted out. We both wanted to sell the company." (5/24 Tr. at 206.)

1 Tr. 552 [Wuycheck previously worked with Cramton for five or six years].)

2 On August 15, 2017, Keely provided a written offer to sell the Grabbagreen brand
3 to Kahala on the same terms as the Due North deal. (Doc. 310 at 3.) It is important to note
4 the specific nature of this proposal, because it helps explain some of the events that
5 followed. The Grabbagreen-Kahala negotiations unfolded in an unusual fashion. After the
6 Due North deal somewhat unexpectedly failed to close, a Grabbagreen area developer
7 named Greg Ferrell reached out to some of his contacts at Kahala in an effort to gauge their
8 interest in “stepping into” the Due North deal. (5/24 Tr. 231-33; 5/26 Tr. 543-44.) Thus,
9 during the initial stages of the Grabbagreen-Kahala discussions, Kahala was not conducting
10 the usual due diligence processes or considering different potential structures for an
11 acquisition. Instead, it was presented with the binary, yes/no choice of whether it wished
12 to “step into” the Due North deal on the same terms that Due North and Keely had
13 previously negotiated. (5/26 Tr. 528-29, 546-49 [Smit]; *id.* at 557 [Wuycheck]; 5/28 Tr.
14 974 [Keely].)

15 As Kahala was considering this proposal, Cramton took affirmative steps to obtain
16 more information about its likelihood of success. Specifically, on September 12, 2017,
17 Cramton left a voicemail message for Wuycheck, her friend at Kahala, in an effort to obtain
18 an update. (5/24 Tr. 237-28; Trial Ex. 307 at CRA000639.) That same day, Wuycheck
19 returned Cramton’s call and provided the following update: “He said that the team was out
20 last week with the holiday so they’re still crunching numbers and should have a decision
21 by the end of the week or first of next week.” (*Id.*) Cramton relayed this information to
22 Keely and explained that she “couldn’t really get a read one way or another” on whether
23 Kahala was interested. (*Id.*)

24 On Monday, September 18, 2017, Keely participated in a pair of phone calls on
25 which many of the disputed issues in this case turn. The first was a relatively short call
26 between two Grabbagreen representatives, Keely and Adams Price (“Price”), an
27 investment banker whom Keely had hired to provide assistance in the sale process (5/26
28 Tr. 641-42; 5/27 Tr. 681), and two Kahala representatives, Smit and Wuycheck. All four

1 individuals testified at trial regarding this phone call and the Court carefully listened to
2 their testimony and assessed their credibility. In the Court's view, Price's and Keely's
3 account of the call was credible. Both testified, in essence, that the Kahala representatives
4 rejected the offer to step into the Due North deal and gave no indication that they might be
5 interested in a differently structured deal. (5/27 Tr. 686 [Price, testifying that "Kahala said
6 that they would not step into those terms," that "that was essentially the call," and that
7 when he "walked away from that call, [he was] under the impression that there were [not]
8 any next steps to be taken"]; 5/28 Tr. 974-75 [Keely, testifying that Smit stated "we can't
9 justify the Due North deal and we're not interested in stepping into it" and that the
10 conversation ended in "very awkward" fashion because "you would expect them to come
11 back and say, hey, well, there's a counteroffer. But there was no counteroffer. There was
12 nothing. And it was silent."].)⁸ In the immediate aftermath of the call, Price believed there
13 was no possibility of a future Kahala-Grabbagreen deal. (5/27 Tr. 686-87 [Price: "I thought
14 that the project was done and . . . I was convinced at that time that we were through. . . . I
15 didn't think that there was going to be another step."]; 5/28 Tr. 975-76 [Keely: "He [Price]
16 told me he thought it was dead."].)

17 Later that day, Keely and Cramton spoke on the phone for approximately 10
18 minutes. At trial, they offered conflicting accounts of what was said during this call.
19 Cramton testified as follows:

20 Q: "What did she [Keely] say?"

21 A: "She told me that there was no deal. And I asked if there was going to be a
22 deal and she said no, there was no deal. And there was – there was no deal.
23 I believe I asked if there was any deal and she said no, there's no deal."

24 ⁸ Smit provided a somewhat different account of the call. He stated that, after
25 rejecting the Due North deal, the Kahala representatives expressed potential interest in a
26 different version of a Grabbagreen acquisition. (5/26 Tr. 531 [Smit: "The only
27 communication was we wouldn't step into the Due North deal *and we would consider*
28 *looking at it on our own.*"], emphasis added.) Although the Court viewed Smit as an honest
and credible witness, it chooses to credit Price's and Keely's testimony on this disputed
point—Price was the most disinterested of the witnesses who testified about the September
18 call, having no personal relationship with the parties, and he struck the Court as having
a firm recall of the details of the conversation (even if he was less familiar with the specifics
of some of the other stages of the Kahala negotiation). In contrast, Wuycheck couldn't
"recall specifics" about the September 18 call. (5/26 Tr. 560.)

1 Q: “Did she say anything specific about the Kahala deal?”

2 A: “Did she?”

3 Q: “Yeah.”

4 A: “No, she said there’s no deal.”

5 (5/24 Tr. 240-41.) Later, Cramton added that Keely said “the deal” was “not moving
6 forward under any circumstances.” (*Id.* at 241-42.)

7 Keely’s account of this call was different. She testified as follows:

8 Q. “[W]alk through that exchange for me, please.”

9 A. “It was very fast. Kim said, hey, so what happened on the call with Kahala?
10 And I said, well, Kim, they’re not going to step into the Due North shoes. I
11 said, I can go back to them in a couple days and see if they’re interested in
something else. And she said, okay. Thanks. And that was the end of it.”

12 (5/28 Tr. 977. *See also id.* at 1027-28 [same].) In short, both sides agree that Keely
13 accurately informed Cramton that Kahala had rejected the Due North deal. The dispute is
14 over what Keely went on to say about the possibility of a future deal with Kahala on
15 different terms. According to Cramton, Keely stated there was no possibility whatsoever
16 of a future deal, while Kelly contends she openly discussed the possibility of future
17 negotiations.

18 This factual dispute presents a close call. Cutting in Cramton’s favor are the fact
19 that her statements to third parties about the call, in the immediate aftermath of the call,
20 were consistent with her trial testimony; that her demeanor in the immediate aftermath of
21 the call, as observed by third parties, was consistent with that of a person who subjectively
22 believed a Kahala deal was no longer a possibility; and that her ultimate reaction to the call
23 (*i.e.*, resignation) was consistent with such a subjective understanding. The Court also
24 generally found Cramton to be a credible and trustworthy witness. With that said, some of
25 Cramton’s claims of abuse and cruelty were, as discussed elsewhere in this order,
26 exaggerated. Additionally, Cramton was never able (at least in the Court’s view) to
27 credibly reconcile her claim that the working conditions at Grabbagreen were so
28 outrageous and intolerable that she had no choice but to immediately resign with the

1 statement in her resignation letter (as discussed further below) that she was willing to
2 continue working for Grabbagreen for another month so long as she received a \$42,000
3 payment.

4 On the other side of the ledger, the Court generally found Keely to be a credible and
5 trustworthy witness. Additionally, and perhaps most important, the Court was ultimately
6 unpersuaded by Cramton's theory as to why Keely made the alleged false statement about
7 the Kahala deal "not moving forward under any circumstances"—that is, because Keely
8 was attempting to dupe her into resigning. The topic of Cramton's continued employment
9 at Grabbagreen never even came up during the September 18 call. In the Court's view,
10 this undermines any suggestion that Keely's brief comment about the status of the Kahala
11 deal near the end of the call was actually part of a nefarious plot to trick Cramton into
12 resigning. Additionally, although it is true (as Cramton emphasized at trial) that Keely had
13 *some* financial motive to trick her into resigning, Keely's financial motivations were more
14 complicated than Cramton portrayed them to be. At the time of the conversations in
15 question, Keely was located thousands of miles away from Arizona, with young children
16 and a sick spouse, desperately hoping to get a deal to sell Grabbagreen across the finish
17 line. As the defense persuasively argued at trial, the last thing Keely would have wanted
18 to do under those circumstances was lose one of her top managerial employees (and
19 business partner)—among other things, such a departure might spook potential acquirors.⁹

20 ⁹ See, e.g., 5/28 Tr. 959 (Keely and Kelli had dinner with Cramton in January 2017
21 because Keely was "trying to keep [Cramton] happy" and was "fearful that she would leave
22 Gulf Girl Squared"); *id.* at 970-74 (testifying about personal events in August and
23 September 2017, including Hurricane Irma, their evacuation and its aftermath, and Kelli's
24 surgery, and business events such as a GGS SBA loan and "turnover of three stores . . .
25 within 48 hours"); *id.* at 983-84 ("Q. So what happened next after you received [Cramton's
26 resignation] letter? A. Probably the next thing I did was walk in there and show my spouse.
27 And after that I believe I picked up the phone, and Jeff Farnell was the first person that I
28 called. At that point I needed to just understand operationally what was going to happen.
And he was her second in command, so he knew how to operate here in the state. . . . And
I said, okay, well, are you interested in taking on some more responsibilities? I'll give you
\$5,000 extra raise right now. He agreed to that. And that made me feel better, because at
least I did not have to get on a plane right there at that moment and come to Arizona."); *id.*
at 985 (Keely: "I sent [Cramton] a text message, and I said, hey, I need you and I to have
a unified message. . . . I'm concerned about there being a ripple effect with them being in
the system. I don't want people to start getting concerned and worried. . . . [W]hen the
word got out, I had a lot of very concerned franchisees calling me."); *id.* at 986-87 (Keely
agreed to Redemption Agreement because "I'm looking at i[t] as if, I keep her over here

1 For these reasons, the Court rejects, in its role as the finder of fact, the notion that Keely
2 told Cramton on September 18, 2017 that the Kahala deal “not moving forward under any
3 circumstances.”

4 It is important to be precise about the chronology of events that followed the
5 September 18, 2017 calls. The next key development occurred on Wednesday, September
6 20, 2017, when Keely sent an email to her investment banker, Price, entitled “Thoughts on
7 Kahala.” (Trial Ex. 86.) In this email, Keely laid out a strategy for re-engaging with
8 Kahala by proposing a different deal structure than the Due North deal. (*Id.*) Under the
9 proposed new deal structure, Keely would sell “100% equity” for \$3.5 million. (*Id.*) This
10 was “[c]onsiderably less” than what Due North had been offering. (5/26 Tr. 643.) Keely
11 did not inform Cramton that she was exploring this option. (5/24 Tr. 248; 5/26 Tr. 646-
12 49.)

13 On Thursday, September 21, 2017, Price attempted, without success, to touch base
14 with Kahala representatives about the new proposed approach. (Trial Ex. 212 at G065903
15 [9/21 text message: “Fyi: call into Kahala today. Will let you know when I hear back.”].)

16 On Friday, September 22, 2017, three significant events occurred. First, Cramton
17 arranged for her personal attorney, Shelley DiGiacomo (“DiGiacomo”), to prepare a
18 resignation letter on her behalf. (Trial Exs. 87, 498.) Although this letter was dated
19 September 22, 2017, Cramton did not deliver it that day. Second, Cramton left a voicemail
20 for Wuycheck (who, as noted, had responded almost immediately to Cramton’s September
21 12, 2017 voicemail) for more information. (5/25 Tr. 262, 427 [Cramton]; 5/26 Tr. 561
22 [Wuycheck].)¹⁰ This time, however, Wuycheck did not respond immediately. (*Id.*) Third,

23 for five years working on new brands, or I keep her over here for three years working on
24 the Grabbagreen brand. And her highest and best use would be at the Grabbagreen brand,
25 because that’s what she knows and what she does.”); 5/27 Tr. 836 (Kelli’s concern with
26 Cramton’s resignation was that “Keely really viewed her as a partner and relied on her for
27 quite some time. The company was in a delicate position, particularly in negotiating a
28 transaction. And these buyers often look to the management team, look for that
management team to stay intact. And if there’s a sudden turnover, it’s precarious in that
type of situation. Plus the ongoing operations in Arizona would be difficult for Keely to
maintain without her.”); *id.* at 836-37 (Kelli’s observation of Keely was that Cramton’s
resignation was not welcome and “would put increased stress on managing the business”).

¹⁰ Cramton testified that the purpose of her September 22, 2017 phone call to

1 Keely separately sent an email to Wuycheck in which she expressed an interest in touching
2 base to “determine [if there] is an interest level in moving forward with Grabbagreen.”
3 (Trial Ex. 88; 5/26 Tr. 647-48.) Wuycheck did not immediately respond to that email,
4 either.

5 On the afternoon on Saturday, September 23, 2017, Cramton sent a text message to
6 Kelli that read as follows: “I would like to talk to you before Monday. Would you be
7 available to talk tomorrow at 9:00 AM PST. Thanks Kim.” (Trial Ex. 333.) This text
8 message did not explain why Cramton wanted to talk.

9 Kelli did not respond to the text message that day. At trial, Kelli credibly testified
10 that the reason she didn’t respond was because she was feeling ill from her cancer
11 treatments, didn’t know why Cramton was asking to speak with her, and didn’t wish to be
12 pulled away from her family activities on a weekend. (5/27 Tr. 856-57, 882-83.)

13 On Sunday, September 24, 2017 at 7:40 a.m., Cramton sent a text message to Keely
14 that read as follows: “Can you ask Kelli if she received the text I sent yesterday? If not
15 please let me know and I will resend.” (Trial Ex. 307 at CRA000643.) Once again, this
16 text message did not explain why Cramton wished to speak with Kelli. Less than an hour
17 later, at 8:23 a.m., Keely responded: “Kelli is not available today.” (*Id.*)¹¹

18 It was at this point that Cramton made an eventful decision. Less than 20 minutes
19 after receiving Keely’s text message—and without waiting to hear back from Wuycheck—
20

21 Wuycheck “wasn’t really . . . to find out about the deal” and was instead to find out “what
22 happened? What – more of a like, explain to me like how this happened. It didn’t make
sense to me.” (5/25 Tr. 427.)

23 ¹¹ One of the examples of “cruelty” and “abuse” offered by Cramton was the failure
24 to provide an immediate response to the text message she sent Kelli on the afternoon of
25 Saturday, September 23, 2017. (*See, e.g.*, Doc. 412 at 14 [closing statement, denigrating
26 the failure to respond as “Radio silence”]; 5/25 Tr. 409-10 [discussing deposition testimony
27 characterizing this episode as “abuse”].) From the Court’s perspective, this is another
28 example of overreach. As discussed above, Kelli and Keely had no idea why Cramton was
texting and certainly didn’t know that she was about to submit a resignation letter. (5/27
Tr. 856-57, 882-83.) Additionally, Kelli was spending time with her family on a weekend
afternoon while recuperating from cancer treatment. (*Id.*) Kelli and Keely are not mind-
readers and the Court’s assessment, as finder of fact, is that they did not do anything
wrong—let alone engage in abuse and cruelty—by determining that it was permissible to
respond to Cramton’s cryptic Saturday-afternoon text by the following business day,
Monday.

1 Cramton chose to submit her previously drafted resignation letter. (Doc. 310 at 4; 5/27 Tr.
2 884; Trial Ex. 423 [resignation letter was submitted at 8:42 a.m. on Sunday, September
3 24].) The letter stated that Cramton’s resignation from GFL and its related entities would
4 be “effective September 25, 2017.” (Trial Ex. 87.) In other words, Cramton provided less
5 than 24 hours’ notice of her resignation. The letter also stated that Cramton would be
6 willing to continue working for GFL another 30 days, but only if she was paid \$42,000.
7 (*Id.*) Finally, the letter noted that “Cramton has drawn no salary from [GFL] or any other
8 Grabbagreen entity since December 2016.” (*Id.*)

9 Upon receipt of the letter, Keely had to scramble to find another employee who was
10 willing to assume Cramton’s responsibilities. (5/28 Tr. 983-84.) She ultimately offered a
11 \$5,000 raise to that employee as part of the bargain. (*Id.*)

12 At an unspecified point during the “morning” of Monday, September 25, 2017,
13 Wuycheck called Cramton in response to the voicemail she had left for him the previous
14 Friday. (5/25 Tr. 262-64.) During the ensuing conversation, Wuycheck revealed to
15 Cramton that there was still a possibility that Kahala might be interesting in acquiring
16 Grabbagreen. (*Id.*) Despite learning this information, Cramton took no steps to claw back
17 or otherwise rescind the resignation letter she had sent the previous day. (5/27 Tr. 867-
18 68.)

19 At 11:57 am on Monday, September 25, 2017—seemingly after the Wuycheck-
20 Cramton phone call, which, as noted, took place that “morning”—Kelli sent a letter to
21 Cramton, on behalf of GFL, accepting Cramton’s resignation. (Trial Ex. 312 [cover email];
22 Trial Ex. 89 [actual letter]; 5/26 Tr. 621 [confirming time sent].) This letter also stated
23 that, because Cramton “voluntarily resigned after being employed for less than five years,
24 Keely Newman has the right to purchase all or any portion of [Cramton’s] membership
25 units for \$1.00 pursuant to the [ECH] Operating Agreement.” (Trial Ex. 89.) Finally, the
26 letter seemed to concede, as Cramton had alleged in her resignation letter, that Cramton
27 hadn’t been paid any wages by GFL since December 2016: “Kim . . . elected to receive
28 loan repayments [from ECO] in lieu of certain compensation to avoid paying income tax

1 on those amounts. For her to choose loan repayments instead of taxable compensation and
2 then claim that she has not been compensated is, at a minimum, dishonest. In any event,
3 Kim is not entitled . . . to demand or unilaterally draw or take a salary or other compensation
4 from Grabbagreen” (*Id.*)

5 On September 27, 2017, Cramton (via her attorney, DiGiacomo) sent a letter to GFL
6 and Kelli that was intended to respond to the September 25 letter accepting her resignation.
7 (Trial Ex. 328.) As for the wage payment issue, this letter again asserted that Grabbagreen
8 had been “paying down [the promissory note] this year in lieu of compensation.” (*Id.*) As
9 for the statement in the September 25 letter that Cramton’s ECH shares were subject to
10 forfeiture, the letter requested a copy of the ECH Operating Agreement so the parties could
11 then “have a productive discussion regarding Ms. Cramton’s unpaid wages and equity
12 interests.” (*Id.*)

13 As these letters were being exchanged (and after Cramton’s resignation had already
14 been announced and accepted), Keely had still not spoken with anybody at Kahala about
15 the counter-proposal she had authorized Price to begin exploring on September 20. (5/28
16 Tr. 979-80.)¹² It was not until Thursday, September 28, 2017, that Keely received a
17 substantive response. On that day, Wuycheck wrote a lengthy email to Price in which he
18 expressed formal interest, on behalf of Kahala, in pursuing a new version of a deal to
19 acquire Grabbagreen. (Trial Ex. 93.)¹³ Specifically, this email stated that Kahala “would
20 be interested in entering into a non-binding LOI [letter of intent] for \$3.25 million cash for
21 Grabbagreen without any employment contract for the current owners.” (*Id.*) The email
22 further explained that “[w]e have not conducted a full due diligence yet on the concept as
23

24 ¹² Keely testified that she received the “first response . . . from [the] earlier
25 communications trying to get [Kahala] back on board” on September 25, but this was “just
26 a voicemail” from Wuycheck to Price, so she still “hadn’t connected” with Kahala. (5/28
27 Tr. 979-80.) However, Wuycheck’s email to Price on September 28 appears to indicate
28 that Wuycheck left a voicemail on September 28. (Trial Ex. 93 [Wuycheck: “Sorry I
missed you when I called this morning. In the interest of time, I figured I would recap my
message to you on email so we can perhaps move this forward.”].)

¹³ Keely testified at trial that she couldn’t remember if the first substantive response
from Kahala occurred on September 28 or 29. (5/28 Tr. 980.) As Trial Exhibit 93 shows,
it was the 28th.

1 our initial dive was to really dig into top level numbers to see if we would be able to justify
2 stepping into the Due North Deal. . . . To answer your question of what is missing in the
3 current data room we just do not know yet as we have not really vetted it yet for the items
4 we would normally conduct due diligence on.” (*Id.*)

5 Meanwhile, the letter exchange between Kelli and Cramton continued. On
6 September 30, 2017, Kelli wrote a response to Cramton’s September 27 letter. (Trial Ex.
7 330.) Once again, this letter seemed to acknowledge that Cramton hadn’t received any
8 wages from GFL throughout 2017: “Ms. Cramton and Ms. Newman agreed there would be
9 no payments to owner service providers at the end of 2016 and in 2017. . . . Ms. Cramton
10 of course chose no distributions or salary over making capital contributions” (*Id.*)
11 This letter again mentioned that Keely had the “right to purchase Ms. Cramton’s [ECH]
12 units for \$1.00” and concluded with the following: “[H]ad Ms. Cramton resigned in the
13 ordinary manner by dealing directly with Ms. Newman, transitioning company matters in
14 an orderly professional fashion, cooperating in messaging to company constituents and not
15 taking actions to harm the company, we would not be exchanging these letters. I personally
16 am perplexed by how this situation was handled by Ms. Cramton and the allegations now
17 being made.” (*Id.*)

18 Following the delivery of this letter, the Kahala negotiations continued advancing.
19 On October 5, 2017, Wuycheck sent an email to Price in which he expressed further
20 interest, on behalf of Kahala, in exploring a potential Grabbagreen acquisition. (Trial Ex.
21 97.) Enclosed with the email was a draft letter of intent (“LOI”), which Wuycheck
22 explained was intended “to give the seller a general reference point as to the purchase price
23 which would be subject to change based off of further due diligence and potential
24 negotiations.” (*Id.*)

25 Five days later, on October 10, 2017, Cramton (via DiGiacomo) wrote a response
26 to Kelli’s September 30 letter. (Trial Ex. 327.) Among other things, this letter stated that,
27 “[i]n hindsight, it appears that Grabbagreen engaged in deliberate conduct to force Ms.
28 Cramton to resign. This was done to force Ms. Cramton to forfeit her equity on the eve of

1 a sale.” (*Id.*)

2 The next day, October 11, 2017, Kelli wrote a response to Cramton’s October 10
3 letter. (Trial Ex. 100.) In this letter, Kelli threatened to sue Cramton and demanded
4 damages of \$2 million. (*Id.*) In response to the allegation that Cramton had been forced
5 to resign on the eve of a deal, Kelli wrote: “The notion that Ms. Cramton was forced out
6 on the eve of a deal is utter nonsense. We have no idea what ‘deal’ you are talking
7 about Let me be imminently [sic] clear, there is not even so much as a signed LOI.
8 Quite clearly Ms. Cramton was not forced out on the eve of a deal. She resigned on
9 vacation away from the office on her own accord.” (*Id.*) Finally, this letter again seemed
10 to concede that Cramton hadn’t been paid any wages by GFL in 2017: “The notion that
11 Ms. Cramton was not involved in the joint decision to choose no payments will require
12 your client to commit blatant perjury.” (*Id.*)¹⁴

13 About two weeks later, on October 23, 2017, Smit (on behalf of Kahala) sent a letter
14 to Keely entitled “Proposed Acquisition of Grabbagreen Business.” (Trial Ex. 102.)
15 Enclosed with the letter was a term sheet that called for Kahala to pay \$3.25 million for the
16 assets of ECH. (*Id.*)

17 About a week later, on October 31, 2017, Keely formally exercised her right, under
18 the ECH Operating Agreement, to purchase Cramton’s membership units for \$1. (Trial
19 Ex. 104.) Keely did so by sending a cover letter and \$1 check to Cramton. (*Id.*)

20 On November 22, 2017, Smit (on behalf of Kahala) sent a revised term sheet to
21 Keely. (Trial Ex. 107.) Under the revised term sheet, the purchase price was reduced to
22 \$2.75 million. (*Id.*)

23 On December 20, 2017, Keely was served with the initial version of the complaint
24 in this lawsuit, which included a minimum wage claim. (Docs. 1, 10.)

25 On December 21, 2017—the very next day—Keely instructed Mills, Grabbagreen’s

26 ¹⁴ The Court notes that Kelli’s October 11 email was not a model of candor. As
27 discussed above, Kahala sent a draft LOI to Keely on October 5, yet six days later, Kelli
28 was denying that any “deal” was in the works and purported not to understand what
Cramton was talking about. Although it may have been literally true for Kelli to deny that
there was a “signed LOI” as of October 11, 2017, the other statements in the letter are less
defensible.

1 accountant, to change the Grabbagreen accounting entries previously booked as ECO loan
2 repayments to Cramton. (5/27 Tr. 797-800; Doc. 408 at 157-67.) Keely further instructed
3 Mills to recharacterize \$25,000 of those distributions as GFL wage payments. (*Id.*) At the
4 time, Keely did not provide any explanation for where this \$25,000 figure came from. (*Id.*)
5 Based on these changes, Cramton was eventually issued a W-2 for 2017 that stated she had
6 received \$25,000 in wages from GFL. (*Id.*)

7 On February 16, 2018, Kahala entered into a formal asset purchase agreement for
8 the assets of ECH. (Trial Ex. 119.) Part 3.1 of the agreement called for an aggregate
9 purchase price of \$2.75 million. (*Id.* at G045431.)

10 On March 13, 2018, the asset purchase agreement was amended to reduce the
11 aggregate purchase price to \$2.6 million. (Trial Ex. 120.)

12 II. Findings Related To The Wage Claim

13 Although the parties agree that “[a]t all relevant times, Cramton was employed by
14 GGS and GFL” (Doc. 310 at 3), they disagree as to whether Keely should also be
15 considered Cramton’s “employer” (*id.* at 22-27). The legal analysis as to this issue is set
16 forth in the “Conclusions of Law” section below. As predicate factual findings, the Court
17 finds, consistent with the testimony cited below, that Keely was the person responsible for
18 hiring Cramton (5/24 Tr. 90); that Keely served as Cramton’s boss (*id.* at 91); that Keely
19 had the authority to set Cramton’s salary and the salary of other GFL employees (*id.* at
20 112-13); that Keely controlled Cramton’s schedule, including when Cramton could take
21 vacation time, and the hours Cramton was required to work (*id.* at 134, 160); and that Keely
22 had the authority to reduce Cramton’s salary (5/26 Tr. 628).

23 Another disputed issue is how many hours Cramton worked for GFL in December
24 2016 and throughout 2017. (Doc. 310 at 7-22.) The Court finds, consistent with Cramton’s
25 testimony (5/24 Tr. 131-170, 174-89) and the testimony of Jeff Farnell (5/25 Tr. 431-39),
26 that the hours set forth in Trial Exhibit 132 are accurate. Although Defendants attempted
27 to poke holes in Cramton’s showing on this point (by suggesting that she sometimes
28 switched between work- and non-work-related activities on days she claimed to be working

1 outside normal business hours and/or spent some of her time on GGS-related tasks), they
2 provided no concrete alternative to Cramton's calculations. At any rate, the Court accepts
3 that Cramton was a hard-working employee who often worked on mornings, nights, and
4 weekends and concludes that her estimate of hours worked for GFL is credible and, if
5 anything, conservative.

6 To the extent it is not moot in light of the above findings, the Court further finds,
7 consistent with Cramton's testimony, that she was not required to record or otherwise keep
8 track of her GFL-related time. (5/24 Tr. 169.) This, in turn, triggers a rebuttable
9 presumption that GFL did not pay the required minimum wage. *See* A.R.S. § 23-364(D).
10 The Court finds that Keely did not rebut this presumption.

11 A final disputed issue is the amount of wages that Cramton received from GFL in
12 December 2016 and throughout 2017. (Doc. 310 at 7-20.) The Court finds, consistent with
13 Cramton's testimony and the documentary evidence she discussed during her testimony,
14 that Cramton stopped receiving wages from GFL in early December 2016 and did not
15 receive any such wages afterward. (5/24 Tr. 117-120, 130.)

16 In a related vein, the Court finds, consistent with Cramton's testimony and the
17 documentary evidence she discussed during her testimony, that the periodic payments
18 Cramton received throughout 2017 were loan repayments on the ECO promissory note, not
19 wage payments from GFL. (5/24 Tr. 189-200.)¹⁵ This is true even though the funds
20 happened to come from GFL's bank account. Although Keely (via Mills) attempted to
21 recharacterize some of the ECO loan repayments as GFL wage payments after Cramton
22 resigned (and caused GFL to issue a W-2 form to that effect), the Court concludes this was
23 nothing more than an ineffective attempt to retroactively change the nature of the loan
24 repayments. On this point, the Court assigns heavy significance to the fact that the
25 payments were contemporaneously entered in Grabbagreen's accounting system as ECO
26 loan repayments, not GFL wage payments (5/27 Tr. 790-95), and were characterized in

27 ¹⁵ Although the documentary evidence regarding the final \$20,000 payment does not
28 specifically characterize it as a loan repayment, the Court easily finds that it was such a
payment, as it followed the same pattern as previous payments that were expressly
characterized as ECO loan repayments.

1 contemporaneous text messages and emails as ECO loan repayments, not GFL wage
2 payments (Trial Exs. 38, 41, 42, 54, 56, 62, 64, 307 at CRA000603, 637.) Indeed, as late
3 as November 2017, Grabbagreen's financial schedules stated that the outstanding balance
4 on the ECO loan (which was, by then, held by ECH) was around \$23,000. (Trial Ex. 119
5 at G045517. *See also* Trial Ex. 785 at CRA4648 [September 2017 text message from Mills
6 to Cramton that balance on note was \$23,017.12]; 5/24 Tr. 204 [explaining context for text
7 message].) This is further proof that the earlier payments to Cramton throughout 2017
8 were ECO loan repayments, not GFL wage payments—otherwise, the loan balance would
9 have never dipped below the original balance of \$66,527. In the Court's view, the
10 contemporaneous treatment of the payments to Cramton as ECO loan repayments provides
11 a far better snapshot into the parties' true intent than any post-lawsuit accounting
12 adjustments that may have been made. It is also notable that Kelli seemed to concede, in
13 many of the letters she wrote on GFL's behalf during the post-resignation letter exchange
14 with DiGiacomo, that GFL hadn't paid wages to Cramton since December 2016. Finally,
15 the Court rejects, in its role as finder of fact, the defense's theory that 2017 ECO loan
16 repayments to Cramton were necessarily recharacterized as GFL wage payments in light
17 of the Due North deal's failure to close.

18 III. Findings Related To The Remaining Claims

19 The essential theory underlying Cramton's claims for negligent misrepresentation,
20 fraud, and breach of the implied covenant of good faith and fair dealing is as follows: (1)
21 Keely knew, based on her phone call with the Kahala representatives on the morning of
22 September 18, 2017, that an acquisition by Kahala was still a possibility (even though
23 Kahala had rejected one specific proposal, which was to step into the Due North deal); (2)
24 Keely nevertheless lied about (or, at a minimum, made negligent misrepresentations
25 concerning) that possibility during her phone call with Cramton later that day, by
26 disclaiming any possibility of a future deal; (3) Keely's intent, in making this
27 misrepresentation, was to trick Cramton into resigning, because a voluntary resignation
28 would trigger Keely's right, under § 9.3(b) of the ECH Operating Agreement, to repurchase

1 Cramton's 18.6% ownership interest for only \$1; (4) Keely's motive for embarking on this
2 course of conduct was financial, in that eliminating Cramton's ownership interest would
3 result in more money in her pocket (and would help her recoup some of the money lost
4 from the downward price adjustments to the deal terms over time); (5) Keely intended for
5 Cramton to rely on the false information concerning the status of the Kahala deal; and (6)
6 Cramton acted reasonably by relying on the false information provided by Keely. (Doc.
7 310 at 46-59, 61-65, 69-70; 5/28 Tr. 1042-62, 1071-76 [Cramton's closing argument].)
8 Additionally or alternatively, Cramton contends that Keely acted improperly in the
9 aftermath of the resignation by choosing, in late October 2017, to exercise her discretionary
10 right under the ECH Operating Agreement to repurchase Cramton's membership units for
11 \$1. (5/28 Tr. 1068-71.) Finally, as for damages, Cramton contends that the fair market
12 value of the membership units as to which she was unfairly deprived was \$483,600. (Doc.
13 310 at 28-35, 59-61, 65-69; 5/28 Tr. 1078-82, 1086.)

14 This backdrop is helpful in framing the issues as to which specific factual findings
15 are necessary. The Court finds that Keely did not make any false statements, or omit or
16 fail to disclose any material information, to Cramton during the September 18, 2017 phone
17 call (or at any point between that phone call and Cramton's resignation). In a related vein,
18 the Court finds that Keely did not intentionally make any false statements to Cramton
19 during the September 18, 2017 phone call (or at any point between that phone call and
20 Cramton's resignation).

21 The Court also finds that Keely did not intend for Cramton to rely on the statements
22 made during the September 18, 2017 phone call for purposes of deciding whether to resign.
23 As discussed above, the topic of Cramton's continued employment at Grabbagreen did not
24 even come up during the call and the Court rejects the notion that Keely's statements during
25 the call were part of a secret plot to trick Cramton into resigning. In a related vein, the
26 Court finds that Cramton's reliance on Keely's statements in making her decision to resign
27 was unreasonable and unjustified. *See* Restatement (Second) of Torts § 538(1)-(2)
28 ("Reliance upon a fraudulent misrepresentation is not justifiable unless the matter

1 misrepresented is material. . . . The matter is material if . . . a reasonable man would attach
2 importance to its existence or nonexistence in determining his choice of action in the
3 transaction in question.”).¹⁶

4 Indeed, even if Keely *had* incorrectly told Cramton during the September 18, 2017
5 phone call that there was no possibility of a future Kahala deal—which, as discussed above,
6 didn’t happen—the Court is skeptical that Cramton would be entitled to recovery. At the
7 moment she began her September 18, 2017 phone call with Keely, Cramton knew that
8 multiple sophisticated franchising companies (Due North and Kahala) were giving, or had
9 recently given, serious consideration to spending millions of dollars to purchase assets in
10 which she held an 18.6% ownership interest. Cramton further knew that Keely was
11 strongly motivated to sell, and sell quickly. And Cramton knew that, under the ECH
12 Operating Agreement, she could forfeit her membership interest by voluntarily resigning
13 before a sale. Thus, even if Cramton was led to believe that the Kahala deal had fallen
14 through, it made no sense for her to react to that news by immediately resigning. Keely
15 was still incentivized to sell and Cramton’s 18.6% ownership interest in the underlying
16 asset was still quite valuable, even if Kahala was uninterested in purchasing it. The logical
17 reaction, under those circumstances, would have been to hang in there for at least a
18 reasonable period of time to see if another acquiror might enter the picture. *See*
19 Restatement (Second) of Torts § 545A, cmt. b (“Although the plaintiff’s reliance on the
20 misrepresentation must be justifiable, . . . [j]ustification is a matter of the qualities and
21 characteristics of the particular plaintiff, and the circumstances of the particular case, rather
22 than of the application of a community standard of conduct to all cases. Negligent reliance
23 and action sometimes will not be justifiable, and the recovery will be barred accordingly
24”).¹⁷

25 ¹⁶ “Absent controlling authority to the contrary,” Arizona courts “generally follow the
26 Restatement when it sets forth sound legal policy.” *In re Sky Harbor Hotel Props., LLC*,
27 443 P.3d 21, 23 (Ariz. 2019). Although the Arizona Supreme Court has not adopted this
28 section of the Second Restatement, several decisions by the Arizona Court of Appeals have
cited it with approval. *See, e.g., Caruthers v. Underhill*, 287 P.3d 807, 815 (Ariz. Ct. App.
2012).

¹⁷ To be sure, had Cramton been the victim of fraudulent misrepresentation, an

1 Moreover, Cramton had a personal relationship dating back more than a decade with
2 Wuycheck, one of the Kahala executives who was personally working on the Grabbagreen
3 deal, and Wuycheck had already proved willing—via their communication on September
4 12, 2017—to share information directly with Cramton about the status of the negotiations.
5 On Friday, September 22, 2017, Cramton again reached out to Wuycheck for information,
6 but this time she didn’t receive an immediate response. It is baffling that Cramton chose
7 to submit her resignation letter on Sunday, September 24, 2017, instead of waiting to hear
8 back from Wuycheck. At trial, in response to questioning from the Court on this exact
9 point—“Why didn’t you wait to hear back from Mr. Wuycheck before formally
10 resigning?”—Cramton responded that “the biggest thing was, I could not go back there on
11 Monday after my vacation. I couldn’t do it. . . . I could not go back to the abuse and to
12 Keely Newman yelling and screaming at me, and just the number of hours I was working,
13 and just . . . couldn’t do it.” (5/25 Tr. 427-28.) The difficulty with this explanation is that,
14 in her resignation letter, Cramton stated she *was* willing to keep working for another month,
15 so long as she received a \$42,000 payment. Thus, Cramton’s claim that she “couldn’t do
16 it” rings hollow.

17 Additionally, on the morning of Monday, September 25, 2017, Cramton did hear
18 back from Wuycheck, who informed her that the Kahala deal was still alive. It appears
19 that, at the time of this conversation, Keely had not yet accepted Cramton’s resignation
20 offer—the testimony at trial was that the Wuycheck-Cramton conversation occurred during
21 the “morning” of September 25 but the email accepting Cramton’s resignation wasn’t sent
22 until 11:57 a.m. (a time that typically isn’t considered part of the morning). This suggests
23 that some window of time existed for Cramton to attempt to rescind her resignation offer
24 after speaking with Wuycheck, but she never attempted to do so. This inaction further

25 intentional tort, she generally would not be required to “exercise the care of a reasonable
26 [person] for [her] own protection.” Restatement (Second) of Torts § 545A cmt. a. And
27 although negligent reliance may sometimes be justified, such as “when there is a relation
28 of trust and confidence between the parties,” which the Court has no doubt existed between
Cramton and Keely in their business dealings, the facts and circumstances surrounding
Keely’s efforts to sell the business—and Cramton’s knowledge and involvement in the
same—persuade the Court that Cramton’s negligent actions taken in reliance on Keely’s
statements were unjustifiable and would preclude recovery here.

1 undermines her claim. *Cf.* Restatement (Second) of Torts § 541 (“The recipient of a
2 fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is
3 false or its falsity is obvious to him.”); *Dawson v. Withycombe*, 163 P.3d 1034, 1048 (Ariz.
4 Ct. App. 2007) (citing same).

5 As for Keely’s conduct following Cramton’s resignation, including her decision on
6 October 31, 2017 to exercise her contractual right under the ECH Operating Agreement to
7 repurchase Cramton’s membership units for \$1, the Court finds that Keely acted fairly and
8 in good faith and did nothing to prevent Cramton from receiving the benefits of their
9 agreement. The ECH Operating Agreement expressly stated that Cramton could forfeit her
10 membership interest if she voluntarily resigned too soon and that is exactly what happened.
11 Under these circumstances, it cannot be said that Cramton was denied a reasonably
12 expected benefit of the bargain.

13 Given these conclusions, there is no need to make factual findings as to whether
14 Cramton has proved, with adequate certainty, the fair market value of her membership
15 interest in ECH or the value of her asserted emotional distress damages. There is also no
16 need to make factual findings as to Cramton’s claim for punitive damages.

17 CONCLUSIONS OF LAW

18 I. Wage Claim

19 Count Four is a claim against Keely for violating the Arizona Minimum Wage Act
20 (“AMWA”), which is codified at A.R.S. § 23-362 *et seq.*, from the period of December 1,
21 2016 through September 2017. (Doc. 88 ¶¶ 111-18.) Under AMWA, “[a]ny employer
22 who fails to pay the wages . . . required under this article shall be required to pay the
23 employee the balance of the wages . . . owed, including interest thereon, and an additional
24 amount equal to twice the underpaid wages.” *Id.* § 23-364(G). Therefore, a threshold issue
25 presented by Cramton’s claim is whether Keely qualifies as an “employer.”

26 AMWA defines the term “employer” as “any corporation, proprietorship,
27 partnership, joint venture, limited liability company, trust, association, political subdivision
28 of the state, *individual* or other entity *acting directly or indirectly in the interest of an*

1 *employer* in relation to an employee.” *Id.* § 23-362(B) (emphases added). Additionally,
2 in the Final Pretrial Order, the parties stipulate that “[t]he Ninth Circuit’s ‘economic
3 reality’ test applies to determine whether an individual or entity constitutes an ‘employer,’
4 considering whether the alleged employer (1) had the power to hire and fire the employees,
5 (2) supervised and controlled employee work schedules or conditions of employment, (3)
6 determined the rate and method of payment, and (4) maintained employment records.
7 Also, it is imperative that she actually exercised one or more of the four control factors
8 listed in this test; mere ability to exercise control is insufficient.” (Doc. 310 at 5, internal
9 quotation marks and citation omitted). Applying these standards and in light of the findings
10 of fact set forth above, Keely qualifies as Cramton’s employer for purposes of Cramton’s
11 work for GFL.

12 Calculating the amount of minimum wages to which Cramton was entitled under
13 AMWA is a matter of simple arithmetic—multiplying the number of hours worked by the
14 applicable minimum wage. As discussed in Trial Exhibit 132 (which the Court has found
15 to be accurate), Cramton worked 140 hours in December 2016 for GFL (and Keely) and a
16 total of 1,583 hours from January to September 2017 for GFL (and Keely). The parties
17 have stipulated that the applicable minimum wage in December 2016 was \$8.05 and the
18 applicable minimum wage throughout 2017 was \$10. (Doc. 310 at 4.) Therefore, the
19 minimum wage to which Cramton was entitled during this period was \$16,957 (\$1,127 for
20 December 2016 and \$15,830 for January to September 2017).

21 The final step in the analysis is determining whether the amount of wages Cramton
22 actually earned during this period from GFL (and Keely) exceeded the minimum wage to
23 which she was entitled. That analysis is straightforward here because, as discussed in the
24 findings of fact, Cramton earned no wages from GFL during the relevant period. The Court
25 also rejects Keely’s argument, set forth in the Final Pretrial Order, that the “employer paid
26 health insurance premiums, employer monthly payments for her car, and employer paid
27 tax gross ups” Cramton received during the relevant period qualify as wages under
28 AMWA. (Doc. 310 at 9, 12.) Cramton has not cited any legal authority supporting her

1 argument on this point and the Court concludes that the aforementioned items constitute
2 non-wage compensation and benefits. *Meyer v. State*, 436 P.3d 511, 516 (Ariz. Ct. App.
3 2019) (“In the context of the Minimum Wage Act, . . . the word ‘benefits’ has an associated,
4 but separate meaning from the word ‘wages.’ When used together, the only reasonable
5 interpretation is that ‘wages’ and ‘benefits’ are complementary parts of employee
6 compensation as a whole.”).

7 Accordingly, as to Count Four, Keely is liable to Cramton for a total of \$50,871,
8 which consists of “the balance of the wages . . . owed, including interest thereon, and an
9 additional amount equal to twice the underpaid wages.” A.R.S. § 23-364(G).

10 II. Remaining Claims

11 The remaining claims are Cramton’s claims against Keely and ECH in Counts
12 Seven, Nine, and Ten for breach of the implied covenant of good faith and fair dealing,
13 negligent misrepresentation, and fraud. (Doc. 88 ¶¶ 131-37, 146-62.)

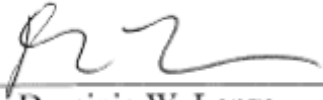
14 As for Count Seven, “[t]he implied covenant of good faith and fair dealing prohibits
15 a party from doing anything to prevent other parties to the contract from receiving the
16 benefits and entitlements of the agreement. The duty arises by operation of law but exists
17 by virtue of a contractual relationship.” *Wells Fargo Bank v. Ariz. Laborers, Teamsters &*
18 *Cement Masons Local No. 395 Pension Tr. Fund*, 38 P.3d 12, 28 (Ariz. 2002). “[I]f one
19 party exercises discretion retained or unforfeited under a contract in such a way as to
20 deny the other a reasonably expected benefit of the bargain, the law of good faith may
21 provide a remedy.” *Beaudry v. Ins. Co. of the W.*, 50 P.3d 836, 841 (Ariz. Ct. App. 2002)
22 (internal quotation marks omitted). As discussed in the findings of fact, Keely acted fairly
23 and in good faith and did nothing to prevent Cramton from receiving the reasonably
24 expected benefits of the ECH Operating Agreement. Although Kelli’s letter of October 11
25 was not a model of candor, it had no bearing on the propriety of Keely’s contractual right
26 to exercise her repurchase option under § 9.3(b) of the Operating Agreement—by the time
27 the letter was sent, Cramton’s resignation had already been official for over two weeks and
28 Keely’s repurchase right had already vested. Accordingly, Keely and ECH are entitled to

1 judgment in their favor on Count Seven.

2 As for Count Nine, Cramton acknowledged during closing argument that the
3 essential elements of her claim for negligent misrepresentation include, *inter alia*, that (1)
4 Keely and ECH “either provided Cramton with false or incorrect information, or omitted
5 or failed to disclose material information”; (2) Keely and ECH “intended that Cramton rely
6 on information provided and the defendants provided it for that purpose”; and (3)
7 “Cramton’s reliance was justified.” (Doc. 412 at 35.) As discussed in the findings of fact,
8 none of those elements are satisfied here. Accordingly, Keely and ECH are entitled to
9 judgment in their favor on Count Nine.

10 Finally, as for Count Ten, Cramton acknowledged during closing argument that the
11 essential elements of her claim for fraud include, *inter alia*, that (1) Keely and ECH “made
12 a misrepresentation to Cramton”; (2) Keely and ECH “knew that the representation was
13 false”; (3) Keely and ECH “intended that Cramton would act upon the representation in
14 the manner reasonably contemplated by the defendants”; and (4) “Cramton’s reliance was
15 reasonable and justified under the circumstances.” (Doc. 412 at 36.) As discussed in the
16 findings of fact, none of those elements are satisfied here. Accordingly, Keely and ECH
17 are entitled to judgment in their favor on Count Ten.

18 Dated this 23rd day of June, 2021.

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22 _____
23 Dominic W. Lanza
24 United States District Judge
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